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10/569,867	02/28/2006	Angelo Martincich	J645-027 US	9750

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EXAMINER

BEKKER, KELLY JO

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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09/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/569,867

Applicant(s)

MARTINCICH ET AL.

Examiner

KELLY BEKKER

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 1-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/11/09.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The attempt to incorporate subject matter into this application by reference to claim 10 (Specification page 2) is ineffective because the application is in the process of examination and throughout said process the applicant will have opportunities to amend the claim, and thus the reference is made to material which may or may not be consistent over time.

The incorporation by reference will not be effective until correction is made to comply with 37 CFR 1.57(b), (c), or (d). If the incorporated material is relied upon to meet any outstanding objection, rejection, or other requirement imposed by the Office, the correction must be made within any time period set by the Office for responding to the objection, rejection, or other requirement for the incorporation to be effective. Compliance will not be held in abeyance with respect to responding to the objection, rejection, or other requirement for the incorporation to be effective. In no case may the correction be made later than the close of prosecution as defined in 37 CFR 1.114(b), or abandonment of the application, whichever occurs earlier.

Any correction inserting material by amendment that was previously incorporated by reference must be accompanied by a statement that the material being inserted is the material incorporated by reference and the amendment contains no new matter. 37 CFR 1.57(f).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in

upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Election/Restrictions

Applicant's election with traverse of Group II, claims 10-19 in the reply filed on June 11, 2009 is acknowledged. The traversal is on the ground(s) that the claims of Group I have been amended to be product by process claims which incorporate the

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method of Group II, and thus the search of Group I is encompassed in the search of Group II.

Applicant's arguments and amendments filed June 11, 2009 regarding the election/restriction requirement have been found persuasive and the Election/Restriction Requirement for claims 1-19 has been withdrawn. As such, claims 1-19 are pending in the application.

Claim Objections

Claims 1-9 are objected to because of the following informalities: Claim 1 recites, "allowing the mass to gelatise in the molds". The term "gelatise" is not a defined word. It is believed applicant has made a typographical error and the claim should recite, "allowing the mass to gelatinize in the molds".

Appropriate correction is required.

Claims 2-9 are included in the objection due to their dependency on claim 1.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 10 recite, "milk-based chewy sweet". The term "milk based" is unclear. It is unclear as to if the milk must be a specific percentage of the sweet in order to be considered "milk based", i.e. over 25% or over 50% or some other percentage, or if the milk must simply be included in the sweet, or if the milk must be the component with the greatest percentage in the sweet, or if the term has some other meaning.

Claims 1 and 10 recite, “milk-based chewy sweet”. The term “chewy” is unclear. It is unclear as to how chewy is defined and thus the term is unclear; it is unclear if chewiness is a subjective property measured by eating and if so who determines which products are chewy and which is not, or if chewy is measured objectively for example by experimentation, and if so what type of experimentation is used and what basis is used to determine a chewy versus a non-chewy product.

Claim 2 recites, “the process comprising adding at least 1 to 10% gelatinizing substance and adding at least 20 to 70% milk”. The claim is unclear as it is unknown what the percentage of ingredients are based on; it is unclear if 1-10% or 20-70% respectively is based on the boiled sugar solution, the final candy mixture, dry weight, or some other intermediate composition.

Claim 3 recites, “comprising at the most 50% milk”. The claim is unclear as it is unknown what the percentage of milk is based on; it is unclear if at the most 50% is based on the boiled sugar solution, the final candy mixture, dry weight, or some other intermediate composition.

Claim 4 recites, “the process additionally comprising adding at least 20 to 80% sugar syrup”. The claim is unclear as it is unknown what the percentage the sugar syrup is based on; it is unclear if 20-80% is based on the boiled sugar solution, the final candy mixture, dry weight, or some other intermediate composition. Furthermore, it is unclear as to if “additional sugar syrup” includes the base sugar syrup recited in claim 1 or refers to another sugar syrup.

Claim 5 recites, “additionally comprising at the most 15% very fine sugar”. The claim is unclear as it is unknown what the percentage the very fine sugar is based on; it is unclear if at most 15% is based on the boiled sugar solution, the final candy mixture, dry weight, or some other intermediate composition. Furthermore, it is unclear as to if “additional sugar” is included the base sugar syrup recited in claim 1 or refers to another sugar.

Claim 5 recites, “additionally comprising at the most 15% very fine sugar”. The claim is unclear as the term “very fine” is a relative term. It is unclear as to how much

the sugar must be ground, i.e. how fine the sugar must be, in order to be considered "very fine" as instantly claimed.

Claim 10 recites the limitation "the gelatinizing substance". The claim is unclear. It is unclear as to what "the" gelatinizing substance is. It is unclear as to if applicant intends to refer to a gelatinizing substance or a specific gelatinizing substance which lacks antecedent basis in the claim.

Claims 10 recites the limitation "the mass". There is insufficient antecedent basis for this limitation in the claim. A mass is not produced in the claimed method and thus it is unclear as to what mass the claim refers to. It is noted that claims 13, 14, 16, and 18 are unclear as the claims also refer to "the mass".

Claim 10 recites the limitation "the step of mixing the milk". The claim is unclear. It is unclear as to what "the" step of mixing the milk is. It is unclear as to if applicant intends to refer to a instant mixing step or a specific mixing step which lacks antecedent basis in the claim.

Claim 10 recites, "the latter being kept at ambient temperature". It is unclear as to what the term "the latter" is referring to. It is unclear if the term refers to the mixed milk composition, the milk itself, or some other component of the process.

Claim 13 recites, "the latter being taken to". It is unclear as to what the term "the latter" is referring to. It is unclear if the term refers to the mixed milk composition, the milk itself, or some other component of the process.

Claim 15 recites, "the concentration of the mass during pouring into the moulds is kept at approximately 78 degree Brix". The claim is unclear as the type of equipment and conditions for measurement of the Brix that were used; it is thus unclear as to the meaning of the measured results.

Claim 17 recites, "the said milk is concentrated milk, and has a refractometric residue of between 70 degree Brix and 80 degree Brix". The claim is unclear as the type of refractometer and conditions for measurement have not been specified; it is thus unclear as to the meaning of the measured results.

Claims 6-9, 11, 12, 14, 16, 18, and 19 are included in the rejection due to their dependency on claims 1 and 10 respectively.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamada et al (US 5236730).

Yamada et al (Yamada) teaches of a marshmallow, which a composition tasing of sugar and thus a sweet, formed by boiling a sugar solution at 112-115C, adding gelatin (which is a gelatinous substance) to the boiled sugar solution without heating, whipping, adding a setting material and flavorings, including milk products, nuts, and fruit juices, to the sugar and gelatin mixture to form a mass, and injected the mass into a mold (Column 2 lines 55-61 and Column 4 lines 36-45). Yamada teaches that the candy produced maintains its quality and softness for a long time (Column 1 lines 5-12) as opposed to conventional candies which combine boiled sugar with gelatin and flavorings (Column 1 lines 34-38).

Regarding the sweet as milk based and chewy as discussed above, the terms “chewy” and “milk based” are unclear, however, since Yamada teaches of substantially the same composition treated by substantially the same method as the instantly claimed composition, one of ordinary skill in the art would expect that the composition of Yamada inherently posses substantially the same properties, including chewiness and classification as milk based, as the instantly claimed invention.

Regarding allowing the gelatinized substance time to dissolve in the sugar solution before mixing in the milk component, since Yamada teaches of adding the gelatin and milk in two different steps, one of ordinary skill in the art would expect that the component of the first step, i.e. the gelatin, was fully incorporated and thus

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dissolved into the mixture before processing to the next step, i.e. adding milk, otherwise there would be no purposes to adding the components separately.

Regarding the milk as stored at ambient temperature, it would be inherent that the milk as taught by Yamada be kept at the temperature of its surroundings, i.e. ambient temperature as instantly claimed.

Regarding pouring of the mass into the molds, Applicant is reminded that a recitation of the method of making the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. One of ordinary skill in the art at the time the invention was made would expect that the method of transferring the mass to the mold, such as pouring or spooning or injecting would not affect the instantly claimed product. Thus, the claimed invention would have been anticipated, absent any clear and convincing evidence and/or arguments to the contrary.

Regarding allowing the mass to gelatinize in the molds, since Yamada teaches of adding a setting material to the mass and then injecting it into the molds and drying, one of ordinary skill in the art would expect that the composition gelatinizes, i.e. sets, in the structure which the mass is transferred to directly after adding the setting agent, i.e. the mold.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al (US 5236730).

Yamada et al (Yamada) teaches of a marshmallow, which a composition tasting of sugar and thus a sweet, formed by boiling a sugar solution at 112-115C, adding

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gelatin (which is a gelatinous substance) to the boiled sugar solution without heating, whipping, adding a setting material and flavorings, including milk products, nuts, and fruit juices, to the sugar and gelatin mixture to form a mass, and injected the mass into a mold (Column 2 lines 55-61 and Column 4 lines 36-45). Yamada teaches that the candy produced maintains its quality and softness for a long time (Column 1 lines 5-12) as opposed to conventional candies which combine boiled sugar with gelatin and flavorings (Column 1 lines 34-38).

Regarding the sweet as milk based and chewy as discussed above, the terms "chewy" and "milk based" are unclear, however, since Yamada teaches of substantially the same composition treated by substantially the same method as the instantly claimed composition, one of ordinary skill in the art would expect that the composition of Yamada inherently possesses substantially the same properties, including chewiness and classification as milk based, as the instantly claimed invention.

Regarding allowing the gelatinized substance time to dissolve in the sugar solution before mixing in the milk component, since Yamada teaches of adding the gelatin and milk in two different steps, one of ordinary skill in the art would expect that the component of the first step, i.e. the gelatin, was fully incorporated and thus dissolved into the mixture before processing to the next step, i.e. adding milk, otherwise there would be no purposes to adding the components separately.

Regarding the milk as stored at ambient temperature, it would be inherent that the milk as taught by Yamada be kept at the temperature of its surroundings, i.e. ambient temperature as instantly claimed.

Regarding allowing the mass to gelatinize in the molds, since Yamada teaches of adding a setting material to the mass and then injecting it into the molds and drying, one of ordinary skill in the art would expect that the composition gelatinizes, i.e. sets, in the structure which the mass is transferred to directly after adding the setting agent, i.e. the mold.

Yamada is silent to the mass as poured into the mold as recited in the method of claim 10.

Regarding the mass as poured into the mold, it would have been obvious to one of ordinary skill in the art at the time the invention was made to transfer the mass from the mixer container to the mold by pouring if an injection apparatus, such as taught by Yamada was not available and if the candy being produced was a small batch. To substitute one known function equivalent of mass transfer, i.e. pouring, for another, i.e. injection, would have been obvious and routine determination of one of ordinary skill in the art depending on the quantity of candy being produced and the equipment available.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olney (US 3607309) in view of Yamada et al (US 5236730).

Olney teaches of forming a marshmallow confection, which a composition tasting of sugar and thus a sweet, by preparing a sugar syrup by boiling at a temperature of about 121 C, adding a milk, including a liquid with non-fat milk solids and sweetened condensed skim milk, adding a colloid, including gelatin which is a gelatinizing substance to the mixture without heat to form a mass, aerating the mass, and casting the mass into molds (Column 1 lines 7-24 and 51-75, Column 3 lines 45-53 and 64-75, and Example 1). Olney teaches that the method comprises adding about 28% of sweetened condensed milk, i.e. sweetened concentrated milk, to the gelatinizing and sugar syrup solution, adding about 5% of a gelatin, i.e. a gelatinizing substance, to the sugar syrup and milk solution, and adding about 67% sugar syrup (i.e. sugar syrup formed from mixing sugar, water, and corn syrup) to the gelatinizing and milk components (Example II). Olney teaches that a flavoring substance is inserted and mixed into the mass before it is formed (Example III).

Regarding the sweet as milk based and chewy as discussed above, the terms "chewy" and "milk based" are unclear, however, since Olney teaches of substantially the same composition treated in substantially the same method as the instantly claimed composition, one of ordinary skill in the art would expect that the composition of Yamada inherently possesses the properties, including chewiness and classification as milk based, as the instantly claimed invention.

Regarding the milk as stored at ambient temperature, it would be inherent that the milk as taught by Olney be kept at the temperature of its surroundings, i.e. ambient temperature as instantly claimed.

Regarding allowing the mass to gelatinize in the molds, since Olney teaches of adding substantially the same gelling agent in substantially the same amount as the instantly claimed composition and allowing the composition to sit in molds, thus one of ordinary skill in the art would expect that the composition as taught by Olney forms in substantially the same manner, including gelatinizing in the mold, as the instantly claimed composition.

Olney is silent to the sugar syrup as boiled between 100-120C, the gelatinizing substance as added to the sugar syrup mixture, dissolving, and then adding the milk mixture, and pouring the mass into molds as recited in claims 1 and 10, to the composition as additionally comprising up to 15% very fine sugar as recited in claim 5, to the checking and regulating the mass at a temperature of approximately 90C as recited in 13, to the gelatin as in the form of pork jelly as recited in claims 7 and 12, and to the Brix value of the mixed composition before it is poured into the mold as recited in claim 15 and to the Brix value of the milk as recited in claim 17.

Yamada teaches of a marshmallow, which a composition tasting of sugar and thus a sweet, formed by boiling a sugar solution at 112-115C, adding gelatin (which is a gelatinous substance) to the boiled sugar solution without heating, whipping, adding a setting material and flavorings, including milk products, nuts, and fruit juices, to the sugar and gelatin mixture to form a mass, and injected the mass into a mold (Column 2 lines 55-61 and Column 4 lines 36-45). Yamada teaches that the candy produced maintains its quality and softness for a long time (Column 1 lines 5-12) as opposed to conventional candies which combine boiled sugar with gelatin and flavorings (Column 1 lines 34-38). Regarding allowing the gelatinized substance time to dissolve in the sugar solution before mixing in the milk component, since Yamada teaches of adding the gelatin and milk in two different steps, one of ordinary skill in the art would expect that the component of the first step, i.e. the gelatin, was fully incorporated and dissolved into

the mixture before processing to the next step, i.e. adding milk, otherwise there would be no purposes to adding the components separately.

Regarding the sugar syrup as boiled between 100-120C, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the boiling temperature of the sugar syrup based upon the boiling and properties of the specific sugars in the syrup, the duration of time allowed for boiling, and the amount of moisture to be boiled off from the sugar syrup. To adjust the boiling temperature would have been obvious and routine determination to one of ordinary skill in the art. For example, it would have been obvious to one of ordinary skill in the art for the boiling temperature of about 121C as taught by Olney to be decreased if a longer boiling time was acceptable, in order to ensure that the sugar solution would not burn from high temperatures.

Regarding the gelatinizing substance as added to the sugar syrup mixture, dissolving, and then adding the milk mixture, it would have been obvious to one of ordinary skill in the art at the time the invention was made to first add the gelatinized substance to the sugar syrup mixture, allowing the gelatinized substance to dissolve, and then add the milk to the gelatinized sugar syrup mixture in the process of Olney in view of Yamada. One would have been motivated to use the process of Yamada, including first add the gelatinized substance to the sugar syrup mixture, allowing the gelatinized substance to dissolve, and then add the milk to the gelatinized sugar syrup mixture, in the method of forming a marshmallow as taught by Olney since the process of Yamada produces a marshmallow that maintains quality and softness for a long time.

Regarding pouring the mass into molds, Applicant is reminded that a recitation of the method of making the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. One of ordinary skill in the art at the time the invention was made would expect that the method of transferring the mass to the mold, such as pouring or spooning would not affect the instantly claimed product. Thus, the claimed invention would have been obvious, absent any clear and convincing evidence and/or arguments to the contrary. Furthermore, regarding the method claims, it would

have been obvious to one of ordinary skill in the art at the time the invention was made to transfer the mass from the mixer container to the mold by pouring if a transfer apparatus was not available and if the candy being produced was a small batch. To substitute one known function equivalent of mass transfer, i.e. pouring, for another would have been obvious and routine determination of one of ordinary skill in the art depending on the quantity of candy being produced and the equipment available.

Regarding the composition as additionally comprising up to 15% very fine sugar, as stated above, the phrase "the composition as additionally comprising up to 15% very fine sugar" is unclear, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include additional sugar in the composition of Olney in order to sweeten the final product. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an amount of sugar depending on the amount of additional sweetness desired in the final product. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a granulation size of the sugar depending on the textural properties desired in the final product. For example, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the sugar to be a very fine sugar if it was desired for the final product to have a smooth consistency; the more fine the components in the product the less gritty and perceivable the components would be. To add a known ingredient for its known function would have been obvious and routine determination to one of ordinary skill in the art at the time the invention was made.

Regarding checking and regulating the mass at a temperature of approximately 90C, in examples I-III Olney teaches that the mass is stored and regulated at a temperature of 135-150F (57-66C). It would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the regulated temperature of the mass during storage from 66C as taught by Olney so that the mass would remain in a fluid state and portions of the mass could be removed when desired without requiring constant reheating and cooling processes. It would have been further obvious to check the temperature in order to ensure that the desired temperature of the mass was maintained during storage. To determine a storage temperature, check and regulate

the desired temperature would have been routine determination of one of ordinary skill in the art at the time the invention was made.

Regarding the gelatin as in the form of pork jelly, pork jelly was a substance known to be formed from pork which contained gelatin. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the gelatin in the form of pork jelly in order for the final product to have the organoleptic properties of the gelatin and the other jelly ingredients, such as pork flavoring and if gelatin was not available in the purified form. To use a one known composition of gelatin or another would have been obvious and routine determination to one of ordinary skill in the art at the time the invention was made.

Regarding the Brix value of the mixed composition before it is poured into the mold, as stated above the Brix value is unclear; however, the Brix value is the dissolved sugar to water mass ratio of a liquid composition. Since Olney teaches of a composition substantially the same as the instantly claimed composition, including the same sugars in substantially the same amounts, one of ordinary skill in the art at the time the invention was made would expect that the Brix value of the mixed composition as taught by Olney to have substantially the same Brix value as the instantly claimed composition. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the Brix value of the liquid composition depending on the sweetness desired in the final product. To adjust the sweetness would be routine determination of one of ordinary skill in the art at the time the invention was made.

Regarding the Brix value of the milk, as stated above the measurement by the refractometer index is unclear; however, the Brix value is the dissolved sugar to water mass ratio of a liquid composition. As Olney teaches of the same milk components as instantly claimed, including dried milk solids and sweetened condensed milk, one of ordinary skill in the art at the time the invention was made would expect that the milk composition as taught by Olney have substantially the same Brix value as the instantly claimed milk. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the Brix value of the milk composition depending on the sweetness desired in the final product and the sweetness provided by

the other compositional ingredients. To adjust the sweetness would be routine determination of one of ordinary skill in the art at the time the invention was made.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KELLY BEKKER whose telephone number is (571)272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kelly Bekker/
Examiner
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